

United States Court of Appeals
for the
District of Columbia Circuit



TRANSCRIPT OF
RECORD

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Court of Appeals, District of Columbia.

OCTOBER TERM, 1901.

No. 1100.

95

No. 8. Special Calendar

HENRY B. F. MACFARLAND, JOHN W. ROSS, LANSING H. BEACH, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, AND JOHN B. BRADY, INSPECTOR OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

UNITED STATES OF AMERICA, EX-RELATIONE, FREDERICK J. MILLER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 23, 1901.

Court of Appeals of the District of Columbia

OCTOBER TERM, 1901.

No. 1100.

No. 8. Special Calendar

HENRY B. F. MACFARLAND, JOHN W. ROSS, LANSING H. BEACH, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, AND JOHN B. BRADY, INSPECTOR OF BUILDINGS OF THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

UNITED STATES OF AMERICA, EX-RELATIONE, FREDERICK J. MILLER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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GLOBE PRINTING CO., WASHINGTON, D. C., AUGUST, 1901.

In the Court of Appeals of the District of Columbia

HENRY B. F. MACFARLAND, JOHN W. ROSS,
LANSING H. BEACH, Commissioners of
the District of Columbia, and JOHN B.
BRADY, Inspector of Buildings of said
District, Appellants,

vs.

UNITED STATES OF AMERICA, *ex relatione*,
FREDERICK J. MILLER.

} No. 1100.

a Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *ex relatione*,
FREDERICK J. MILLER,

vs.

HENRY B. F. MACFARLAND, JOHN W. ROSS,
LANSING H. BEACH, Commissioners of
the District of Columbia, and JOHN B.
BRADY, Inspector of Buildings of said
District.

} No. 44566. At Law.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition in Mandamus.*

Filed March 15, 1901.

In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *ex relatione*,
FREDERICK J. MILLER,

vs.

HENRY B. F. MACFARLAND, JOHN W. ROSS,
LANSING H. BEACH, Commissioners of
the District of Columbia, and JOHN B.
BRADY, Inspector of Buildings of said
District.

} At Law. No. 44566.

To the honorable, the Justice of the Supreme Court of the District of Columbia, holding a special term as a Circuit Court, petitioner shows:

1. That the relator, Frederick J. Miller is a citizen of the United States, a resident of said District, and of lawful age; that he is, and since the fourth day of October, A. D. 1900, has been, the owner in fee simple, of all that certain piece and parcel of land, situate in the city of Washington, District of Columbia, known as and being part of original lot numbered one (1) in Square numbered nine hundred and fifty (950), more particularly described as follows, to wit: Beginning for the same at the northeast corner of said lot numbered one (1), on Tenth Street, and running thence South on said Street, thirty-two (32) feet; thence West forty-six (46) feet four (4) inches; thence North thirty-two (32) feet, and thence East forty-six (46) feet four (4) inches, to the beginning. That said lot and parcel of land is vacant and unimproved, and is the only property owned by the relator in said square.

2. That the respondents, the said Henry B. F. Macfarland, John W. Ross and Lansing W. Beach, are the Commissioners of the District of Columbia, duly appointed and qualified, and that they or their predecessors in office, did, as such Commissioners, on or about July 31, 1897, issue and promulgate an order in the following language, to wit:

“Whereas the Act of Congress approved June 14, 1878, provides that the Commissioners of the District of Columbia shall make and enforce such building regulations for the said District as they may deem advisable, and that the regulations so made shall have the same force and effect within the District of Columbia, as if enacted by Congress, it is

“Ordered: First, That the following are hereby made and promulgated, as the Building Regulations of the District of Columbia, and shall control the construction, erection, maintenance, repair and removal of all buildings, as defined in these regulations, and their appurtenances, within the District of Columbia, with the exception of those owned by the or under the sole control of officers of the United States.”

“Second: These regulations are subject to modification or repeal by Congress, or by the Commissioners of the District of Columbia, as the public interests shall require.”

Following which order, and thereunto annexed, were numerous regulations, and among them the following, which are still enforced by said Commissioners, namely:

“Section 34. No dwelling house less than sixteen feet wide shall be erected: Provided, however, that any existing lot that is 3 not less than twelve feet wide, and which is a part of a duly recorded subdivision may have a dwelling erected thereon the full width of the lot. Blocks of two or more dwelling houses shall

not be erected until the land upon which they are to be erected has been subdivided, so that each house shall have a separate lot, unless special permit be granted in each case by the Commissioners."

"Section 19. Permits from the Inspector of Buildings must be obtained in advance of the erection, alteration, repair, removal and maintenance of all buildings and their appurtenances which may involve the public safety, and which are or abut on public spaces; excepting when such buildings are on land directly in charge of officials of the United States."

"Section 195. Any person or persons violating any of the foregoing regulations, shall, on conviction thereof in the Police Court of the District of Columbia, be punished by a fine of not less than one nor more than one hundred dollars, for each offense, to be recovered as other fines and penalties are recovered."

Section 31. "The fees under these regulations shall be as follows: For each permit for a new building or other structure, ten dollars for each building." (And other provisions as to fees, not applicable to this case.)

All of which regulations are published in pamphlet form under the authority of said Commissioners, marked "Regulations governing the erection, removal, repair and electric wiring of buildings, and the erection and operation of Elevators and Fire Escapes in the District of Columbia," and petitioner prays leave to produce and read 4 from said pamphlet at the hearing herein, as a part of this petition or in connection herewith, such portions of said regulations as may be necessary.

That the respondent John B. Brady was duly appointed as Inspector of Buildings by the other respondents, the Commissioners of said District, or by their predecessors in office, and that he is now, and was at the time of making said application for a permit to erect said dwellings, as aforesaid, the Inspector of Buildings for the District of Columbia, duly appointed and qualified as such, and that he is in all matters pertaining to his office, under the authority and control of said Commissioners.

3. The said lot or parcel of land being in the condition above set out, relator determined to improve the same by erecting thereon two two-story and basement brick dwellings, of six rooms each, with all modern improvements, each to front sixteen feet on Tenth Street, Southeast, covering in width the entire front of said vacant lot. Said houses were to have a depth of thirty-six (36) feet, thus leaving an open space in the rear of said lots of ten feet four inches, a space larger than is required by the building regulations in force in said District. That a plan or diagram of said lot is filed with this petition, showing the part of said lot to be occupied by said dwellings, and the part to be left vacant. Said plat is marked "Exhibit F. J. M., No. 1," and is prayed to be examined and considered as part hereof. In pursuance of said purpose he caused plans and specifications to be

prepared for said dwelling houses by a competent architect, who, pursuant to instructions from relator, prepared plans and specifications therefor, which were in substantial conformity to the building regulations in force in said District; and with a few minor changes, suggested by said Inspector, and adopted by the relator, were in exact conformity to said regulations. Relator further states that he was and is financially able to cause said houses to be erected and finished with all convenient speed, but that he is prevented from so doing by the unlawful refusal of the respondents to issue him a permit as hereinafter set forth, and on that account alone, the erection of said houses has not been commenced.

4. That as required by said building regulations, relator made application to said Inspector of Buildings, for a permit to build said houses, tendering the proper fee therefor, and submitting said plans and specifications; that said application was refused by the said Inspector of Buildings, not because of any want of conformity of said plans and specifications to the building regulations in the matter of materials, workmanship, and provisions for the safety of the public, and the health of the persons who might inhabit said houses when completed, but because said land was not subdivided as required by the provisions of the building regulations, relating thereto, hereinbefore set out.

5. Relator further avers that pursuant to an act of Congress, entitled "An Act to regulate Subdivision of Land within the District of Columbia," approved August 27, 1888, the respondents, the said Commissioners of the District of Columbia, promulgated a series of regulations or orders, regulating the platting and subdividing of lands and grounds within the District of Columbia; which general orders and regulations went into effect May 15, 1899; the same were published under the direction of the respondents, the said Commissioners, in pamphlet form, a copy of which petitioner files with his petition, marked "Exhibit F. J. M., No. 2," and prays leave to produce and read from the same, at the hearing of his said petition.

Sections 1, 2 and 6 of said General Orders, are in the following language, to wit:

Section 1. "Plats of subdivisions will be drawn in the office of the Surveyor of the District of Columbia, and certified to by him, unless otherwise directed by the Commissioners."

Section 2. "Applications for the approval of subdivisions must be made to the Commissioners of the District of Columbia, and must be accompanied by—

(a) Plats in duplicate, showing the proposed subdivision which plats must be signed by the owners of the land subdivided, and their signatures witnessed by two witnesses.

(b) Affidavit by persons executing subdivisions that they are the owners in fee simple of the property subdivided; that no other per-

son has any interest or claim therein; that they are in peaceful occupation thereof, and that there are no suits or actions pending affecting the title to said property.

(c) Certificates of the proper officials that all taxes, special assessments and other public charges upon the property have been paid."

7 Section 6. "Lots may be subdivided as follows:

(a) Into lots not less than sixteen feet wide and fifty feet deep: *Provided, however,* That the following exceptions to this rule will be permitted, triangular lots subdivided under paragraphs *a*, *b*, and *c* of this section, to have an area of at least 600 square feet.

(b) Within the fire limits, where the assessed value of the land is sixty cents or less per square foot, a minimum width of twelve feet will be approved.

(c) Where two or more substantial houses are on the same lot, the lot may be divided so as to give each house a separate lot.

(d) Where the owner of a portion of a lot does not own any contiguous ground available for subdivision, the portion so held may be given a lot number.

(e) Where the owner of a parcel of ground does not own any contiguous land available for subdivision, and the said parcel is of such width that there shall be left a surplus of not less than eight feet after laying off sixteen feet lots, the whole of such parcel may be divided into lots of equal width, equal in number to the number of sixteen foot lots plus one."

That pursuant to the requirements of said Section one of said general orders, relator applied to the Surveyor of the District of Columbia to have drawn a plat, subdividing said parcel of ground into two lots of equal width or size, and that he would certify the same as required by the terms of said section, in order that it might be submitted to the Commissioners of the District of Columbia, for approval. That he tendered unto the said Surveyor, his fees and charges for making such plat and certification. That the surveyor

declined to make such plat and certification, on the ground

8 that the depth of said proposed lots was not such as was required by section 6 of the general orders relating to subdivisions, promulgated by the said Commissioners, as aforesaid, and failed and refused so to do. Thereupon, relator made application to said respondents, the Commissioners of the District of Columbia, for the approval of the subdivision so to be made by him as aforesaid, and tendered himself ready and willing to comply with all the regulations relating to the platting and subdividing of lands and grounds, save only as to the depth of said lots in said proposed subdivision; in respect to which he was unable to comply, for the reason hereinbefore stated, that the above described real estate is the only land that he owns in said Square. That said Commissioners refused to approve said application, and declined and still decline and refuse

to allow said subdivision to be made, or to grant unto relator a permit to build said houses, without said subdivision being previously made. Relator further avers that he has no desire, although he is willing, and hereby tenders himself ready and willing to have the land so subdivided and platted, in order to conform so far as he is able, to the regulations and rules made by the said respondents, the Commissioners of said District, in respect to the issuance of such permits. The respondents, the Commissioners of said District, refuse to allow a permit to issue to relator for the erection of said houses, and wholly refuse to allow said subdivision to be recorded, because the said proposed lots are not of the required depth of fifty feet, and for no other reason.

Relator further avers that said houses if erected in accordance
9 with the plans and specifications prepared by him as aforesaid, will be safe, reasonably commodious and convenient, and the health of the inmates provided for in such manner as accords with the modern methods of building; all of which is admitted by the said respondents, the Inspector of Buildings and the Commissioners of the District of Columbia. Relator further avers that the depth of fifty feet required for each lot, before a permit to erect a building shall under any circumstances be granted, is not necessary to health and safety in the construction of dwellings, but is an arbitrary and unnecessary requirement. That for many years prior to the adoption of said regulations, the building regulations then in force permitted the erection of dwellings on lots having a depth of 46 feet or less; and many such dwellings were erected, and are still standing and occupied, and are safe and healthful habitations.

6. That relator further avers that he cannot proceed in the erection of said dwellings without a permit so to do, having been first obtained from the respondent, the Inspector of Buildings of said District, without incurring liability to arrest by the police of said District, who are instructed by respondents to stop any work of construction attempted without such permission. Your relator charges that the regulation above quoted, providing that no dwelling house shall be erected upon a lot less than fifty feet in depth, is not such a building regulation as is contemplated by or within the true intent or meaning of the Act of Congress, in alleged pursuance of which said building regulations were adopted and promulgated.

Such regulation is ultra vires, and void. That said regulation
10 is, in effect, an attempt to hinder and prevent citizens owning property in the District of Columbia, from making improvements upon, and using and enjoying their property with the freedom and to the extent guaranteed to them by the Constitution of the United States, and the law of the land. That the provision requiring subdivisions to be made in all cases before a building can be erected, is clearly not within the scope of said act of Congress, and is not within the lawful authority of the Commissioners of the District of

Columbia to enforce as a building regulation, and is therefore void. The relator having complied with, and tendered himself ready and willing to comply with all the building regulations in force, as aforesaid, and with all valid laws and requirements in the premises, it became and is the plain duty of respondents, the Commissioners of the District of Columbia, as to which they have no discretion, in law, to issue to him a permit to construct said dwellings; or to cause the respondent, the Inspector of Buildings, so to do; and to withdraw their objections to the erection of said buildings, upon payment by respondent, of the lawful fees in such case made and provided, which, as hereinbefore stated, were tendered, and which relator now tenders himself ready and willing to pay at any time. Your relator further avers that he will be irreparably injured in the premises, by the refusal of the respondents to allow said work to be undertaken and completed, and that he is without remedy to compel them to withdraw their opposition, except by resort to the court for extraordinary relief by mandamus.

11 Wherefore petitioner prays:

That the writ of mandamus may issue, addressed to the respondents, the said John B. Brady, Inspector of Buildings, commanding him to issue or cause to be issued to the relator, a permit to erect said dwelling houses, upon the payment of the regular fee therefor; or commanding the respondents, the Commissioners of said District, to withdraw their opposition to the erection of said dwelling houses, and to give such orders and directions as may be necessary to secure to relator the right to erect said dwellings without molestation from any of their subordinates in their official capacity.

FREDERICK J. MILLER.

B. F. LEIGHTON,
Attorney for Relator.

DISTRICT OF COLUMBIA, *To wit:*

I, Frederick J. Miller, being first duly sworn, on oath say that I have read the foregoing petition by me subscribed, and know the contents thereof; that the facts therein stated of my own knowledge are true, and those stated upon information and belief, I believe to be true.

FREDERICK J. MILLER.

Subscribed and sworn to before me, this 14th day of March, A. D. 1901.

[SEAL.]

C. CLINTON JAMES,
Notary Public, D. C.

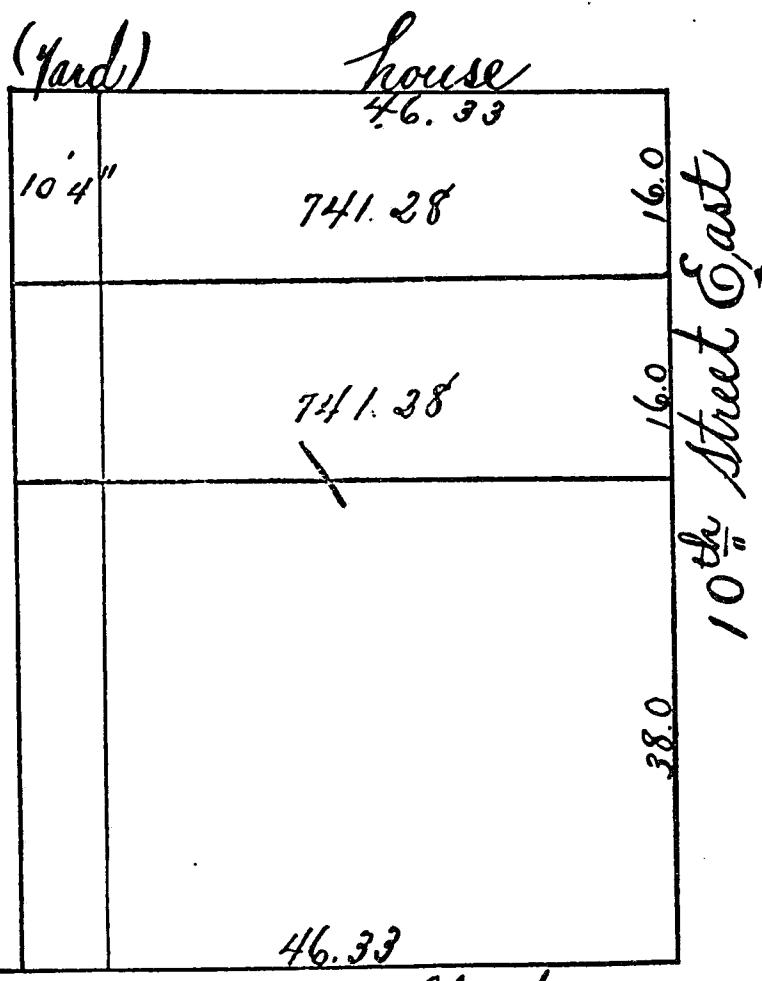
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EXHIBIT F. J. M. No. 1.

Filed March 15, 1901.

44,566

Assessed val 35cts
per ft.



Proposed sub-division of North 32 feet of lot 1, Square 950, into 2 lots 16 feet front each.

13

(EXHIBIT F. J. M., No. 2.)

Filed March 15, 1901.

GENERAL ORDERS

REGULATING THE

PLATTING AND SUBDIVIDING OF LANDS AND GROUNDS
IN THE
DISTRICT OF COLUMBIA.

In effect May 15, 1899.

14

GENERAL ORDERS

REGULATING THE

PLATTING AND SUBDIVIDING OF LANDS AND GROUNDS
IN THE
DISTRICT OF COLUMBIA.

In effect May 15, 1899.

15

AN ACT

To regulate the subdivisions of land within the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioners of the District of Columbia be, and they are hereby, authorized and directed to make and publish such general orders as may be necessary to regulate the platting and subdividing of all lands and grounds in the District of Columbia; and no such plat or subdivision made in pursuance of such orders shall be admitted to record in the office of the surveyor of said District without an order to that effect indorsed thereon by the Commissioners of said District.

SEC. 2. That all spaces on any duly recorded plat of land thereon designated as streets, avenues, or alleys shall thereupon become public ways, provided they are made in conformity with the provisions of section one of this act, and as such be under the protection of the laws and ordinances in force applicable to public roads out of said city.

SEC. 3. That if by the extension of any of the present streets or avenues, or the opening of any public way, it becomes necessary to

traverse any grounds now used as a cemetery, or place of burial, the Commissioners are hereby empowered to secure a right of way through the same by stipulation with the proprietors thereof.

SEC. 4. That the orders of the Commissioners made pursuant to this act shall have the force and effect of law thirty days subsequent to the day of publication; and all laws and provisions of laws inconsistent herewith are hereby repealed.

SEC. 5. No future subdivision of land in the District of Columbia, without the limits of the cities of Washington and Georgetown, shall be recorded in the surveyor's office of the said District unless made in conformity with the general plan of the city of Washington.

Approved August 27, 1888.

GENERAL ORDERS

REGULATING THE

PLATTING AND SUBDIVIDING OF LANDS AND GROUNDS IN THE DISTRICT OF COLUMBIA.

OFFICE OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
WASHINGTON, *April 10, 1899.*

Ordered: Pursuant to the requirements of an act of Congress, entitled "An act to regulate the subdivision of land within the District of Columbia," approved August 27, 1888, the Commissioners of the District of Columbia hereby make and promulgate the following general orders to regulate the platting and subdividing of lands and grounds in the District of Columbia, said orders to be in effect on and after May 15, 1899, repealing all other orders or regulations contrary thereto previously made under authority of said act.

PLATS OF SUBDIVISIONS.

Sec. 1. Plats of subdivisions will be drawn in the office of the Surveyor of the District of Columbia and certified to by him, unless otherwise directed by the Commissioners.

APPLICATIONS TO SUBDIVIDE.

Sec. 2. Applications for the approval of subdivisions must be made to the Commissioners of the District of Columbia, and must be accompanied by—

(a) Plats in duplicate, showing the proposed subdivision, which plats must be signed by the owners of the land subdivided and their signatures witnessed by two witnesses.

(b) Affidavit by persons executing subdivisions that they are the owners in fee simple of the property subdivided; that no other per-

son has any interest or claim therein; that they are in peaceful occupation thereof, and that there are no suits or actions pending affecting the title to said property.

(c) Certificates of the proper officials that all taxes, special assessments and other public charges upon the property have been paid.

APPROVAL OF SUBDIVISIONS.

Sec. 3. Subdivisions must receive the approval of the Commissioners of the District of Columbia, or a majority of them, before being admitted to record. When subdivision plats are so approved, they shall become the property of the District of Columbia, and one copy shall be filed and recorded in the office of the Surveyor and one copy in the office of the Assessor of the District of Columbia.

SUBDIVISION OF TRACTS INTO BLOCKS.

Sec. 4. When a tract of land is laid out into a block, or blocks, streets, avenues and other public spaces must be provided in conformity with the general plan of the city of Washington, as determined by the plans prepared and adopted under the provisions of the act of Congress, entitled "An act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities," approved March 2, 1893, and subsequent amendments thereto.

SUBDIVISION OF BLOCKS INTO LOTS.

Sec. 5. In laying out a block or any portion thereof into original lots the lots must be at least sixteen feet wide and 60 feet deep, and shall abut upon an alley: *Provided*, That, if after laying off a tract into sixteen-foot lots a surplus is left not less than twelve feet wide, such surplus may be numbered as a lot, or the tract may be divided into parcels of equal width equal in number to the number of sixteen-foot lots plus one, but triangular lots shall have an area of at least 720 square feet, and alleys must be provided as prescribed in section 8 of these regulations.

RE-SUBDIVISION OF LOTS.

Sec. 6. Lots may be re-subdivided as follows:

(a) Into lots not less than sixteen feet wide and fifty feet deep: *Provided, however*, That the following exceptions to this rule will be permitted, triangular lots subdivided under paragraphs a, b and e of this section to have an area of at least 600 square feet.

(b) Within the fire limits, where the assessed value of the land is sixty cents or less per square foot a minimum width of twelve feet will be approved.

(c) Where two or more substantial houses are on the same lot the lot may be divided so as to give each house a separate lot.

(d) Where the owner of a portion of a lot does not own any con-

tiguous ground available for subdivision the portion so held may be given a lot number.

(e) Where the owner of a parcel of ground does not own any contiguous land available for subdivision, and the said parcel is of such width that there shall be left a surplus of not less than eight feet after laying off sixteen-foot lots, the whole of such parcel may be divided into lots of equal width equal in number to the number of sixteen-foot lots plus one.

(f) In the re-subdivision of lots alleys must be provided as prescribed in section 8 of these regulations.

MINOR STREETS.

Sec. 7. A minor street not less than 50 feet wide may be opened in any block: *Provided*, That the distance between streets is sufficient to allow for two tiers of lots at least sixty feet deep and alley facilities as required by these regulations.

ALLEYS.

Sec. 8. Alleys must be provided as follows, so that as far as possible each lot shall abut thereon:

(a) Within the city limits alleys of a minimum width of ten feet.

(b) Outside of the city limits alleys of a minimum width of fifteen feet.

(c) When a block is divided into original lots, alleys must be provided so that each lot will abut thereon, said alleys to be continuous throughout the square.

(d) When lots are re-subdivided, alleys or rear outlets must be provided, wherever practicable, in accordance with a plan approved by the Commissioners.

(e) Alleys may be accepted of one-half the widths named in paragraphs "a" and "b," section 8, where it appears equitable to the Commissioners that the other half should be acquired from contiguous lots.

Sec. 9. No subdivision of land will be received for record unless the plat conforms to the following requirements and the subdivision is marked on the ground as hereinafter described:

(a) The original tract to be subdivided shall be plainly indicated as to location and boundaries and its total acreage given.

(b) The true bearings of the boundary lines shall be given in degrees and minutes, and their lengths in feet and decimal parts of a foot.

(c) The true bearings of streets and alleys shall be given in degrees and minutes, and the width of every street and alley in feet and decimal parts of a foot. Wherever a street line intersects a boundary line, the distance shall be given to one of the boundary corners.

- (d) The dimensions of every block shall be given.
- (e) The subdivision, before it is allowed on record, shall be marked on the ground with monuments placed at every boundary angle and every street corner. These monuments shall have square tops four inches to six inches, be sunk in the ground not less than two feet, and project above the surface not less than three inches.

DESIGNATIONS OF HIGHWAYS, RESERVATIONS AND LOTS.

Sec. 10. The names of avenues, streets, circles and public spaces and the numbering of lots shall be subject to the approval of the Commissioners of the District of Columbia. The following plan of naming will be followed:

(a) The broad diagonal highways will be designated as avenues, and will be named after the States and Territories of the Union.

21 (b) Streets running north and south will be numbered consecutively each way from the meridian of the Capitol. If the streets are not direct continuations of city streets, their names will correspond with the names of city streets most nearly due north and south in the line of their continuation.

(c) Streets running east and west will be named from the letters of the alphabet until these letters are exhausted. Beyond this they will be named in accordance with a plan approved by the Commissioners. Streets not in exact alignment with those to the east or west of them will take the names of streets most nearly in the line and south in the line of their continuation.

(d) Small streets which do not form an essential part of the rectangular system of streets will be designated as "places," and will receive such names as may be approved by the Commissioners.

(e) Circles and public squares will be named after distinguished Americans who have been prominent in the service of their country.

(f) No two streets, avenues, places or reservations shall bear the same name.

(g) No two lots in any square of ground shall be designated by the same number or by the same letter of the alphabet.

JOHN B. WRIGHT,

JOHN W. ROSS,

LANSING H. BEACH,

Commissioners of the District of Columbia.

Rule to Show Cause.

Filed March 15, 1901.

In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *ex relatione*,
FREDERICK J. MILLER,*vs.*HENRY B. F. MACFARLAND, JOHN W. ROSS,
LANSING H. BEACH, Commissioners of
the District of Columbia, and JOHN B.
BRADY, Inspector of Buildings of said
District.

At Law, No. 44566.

Upon consideration of the petition in the above entitled cause, filed herein, it is this 15th day of March, A. D. 1901, ordered that the respondents, the Commissioners of the District of Columbia, and the Building Inspector for said District, show cause, if any they have, on the 26th day of March, A. D. 1901, at ten o'clock A. M., why the writ of mandamus should not issue as in said petition prayed; provided a copy of this order and said petition be served upon the said Commissioners, or one of them, and the said Inspector of Buildings, on or before the 18th day of said month and year.

By the Court:

HARRY M. CLABAUGH,
*Justice.**Marshal's Return.*

Served copy of within Rule and Copy of the petition in this cause on the Commissioners of the District of Columbia by service on John W. Ross, one of Said Commissioners March 15, 1901, and on
23 John B. Brady, Inspector of Buildings of the District of Columbia, March 16, 1901.

AULICK PALMER,
Marshal,
B.

Answer of Respondents.

Filed March 28, 1901.

In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, on the
relation of FREDERICK J. MILLER,
Petitioner. }
vs. } No. 44566. Law.
HENRY B. F. MACFARLAND, *et al.*,
Defendants. }

The answer of the Respondents, Henry B. F. Macfarland, John W. Ross, and Lansing H. Beach, Commissioners of the District of Columbia, and John B. Brady, Inspector of Buildings of the District of Columbia, to the petition for mandamus herein filed.

Answering said petition and the several paragraphs thereof, these respondents say:

1. They believe to be true the averment of said paragraph in respect to the ownership by the relator since October 4, 1900, of the real estate therein described, and that the same is vacant and unimproved, but they have no knowledge whether the same is the 24 only real estate owned by said relator in said square.

2. The respondents, Henry B. F. Macfarland, John W. Ross, and Lansing H. Beach admit that they are the Commissioners of the District of Columbia, and that on or about July 31, 1897, the then Commissioners of the District of Columbia, made and promulgated certain building regulations for the District of Columbia, pursuant to the Act of Congress approved June 14, 1878, as in said paragraph of said petition set forth and that among them are the several regulations in said paragraph of the relator's petition quoted. They further admit that the respondent John B. Brady is now and was, at the time of the making of the application for permit by the relator in said paragraph mentioned, the duly appointed and qualified Building Inspector of the District of Columbia.

3. They believe the relator determined to improve the real estate in said petition described, as therein averred, and that the improvement thereof in the manner proposed contemplated that the space in the rear should be four inches greater in depth than required by the Building Regulations of the District of Columbia, and they admit that if the plans and specifications referred to in said paragraph are the same plans and specifications submitted to the respondent, the Building Inspector of the District of Columbia, with the changes suggested by said Inspector, they accord with the regulations, but as these respondents have no knowledge other than contained in said petition, they are unable to admit or to deny that the relator is

25 financially able to cause said houses to be erected and finished as therein averred. While these respondents admit that the relator has been prevented from proceeding with the erection of said houses because of the refusal of these respondents to issue to him a permit thereon, they deny that such refusal was unlawful or without warrant in law.

4. These respondents admit that the relator made application to the respondent, the Inspector of Buildings, for a permit to build said houses, as averred, and that said application was refused by him because the land of the relator had not been subdivided, as required by the provisions of the Building Regulations and not because of want of conformity of said plans and specifications to said Regulations, so far as the materials and workmanship thereof are concerned; that while they admit that said houses, when standing by themselves and so long as the adjacent lots in the square remain unimproved, may be safe and healthy for the inmates thereof, they aver, that in their judgment, when the adjacent lots are improved, that the buildings proposed to be erected by the relator, if erected notwithstanding the regulations aforesaid, may become unhealthy and the public health and safety thereby become endangered.

5. The respondents, the Commissioners of the District of Columbia, admit that pursuant to the Act of Congress approved August 27, 1888, and under their general authority, they promulgated a series of regulations or orders regulating the platting and subdivision of land within the District of Columbia, and that the same went into effect May 15, 1899, and that said orders made the several provisions in said paragraph quoted, though these respondents, 26 for greater accuracy, refer to the printed copy of the same appended as an exhibit to the petition herein. They further believe that the relator applied to the Surveyor of the District of Columbia for the subdivision of the land in said petition described into two lots of equal width and that the said Surveyor declined to make a survey and plat of the same because said proposed lots were not at least fifty feet in depth as required by Section 6 of the General Orders relating to the Subdivision herein referred to, and that thereafter, the relator applied to the respondents, the Commissioners of the District of Columbia, for the approval of said subdivision, and that said respondents, for the reason aforesaid, declined to approve the same, and that they still decline to do so or to grant the relator a permit to erect the said houses until a subdivision shall have been made which in all respects accords with the Regulations hereinbefore mentioned. The respondents admit that if erected in accordance with the plans and specifications submitted, said houses will be safe, so far as the structure thereof is concerned, reasonably commodious and convenient for the inmates thereof and while they admit, as hereinbefore set forth, that the health of the inmates thereof will be substantially provided for so far as said houses them-

selves are concerned and so long as the adjacent land remains unimproved, they say that, in their opinion, when the adjacent property is improved, as they aver it is likely to be, the relator's houses in combination with such adjacent improvements, are likely to produce a situation injurious to the public health and safety. While these respondents admit that the exact depth of fifty feet for each lot is not essential under all circumstances to the public health and safety,

27 they aver that some limitation on the depth of lots upon which dwellings may be erected is essential to such health and

safety; and that in the exercise of their best discretion, which they are advised has been committed to them by the law, they determined that fifty feet is the smallest depth that should be permitted for such purposes. They admit that for many years prior to the adoption of the regulations now in force, the regulations then in force permitted the erection of dwellings on lots having a depth of 46 feet or less and that a number of such dwellings were erected and are still standing and that while some of them may be safe and healthy habitations, nevertheless the situation produced thereby, in combination with adjacent houses thereafter erected, as observed by these respondents, induced these respondents, in the exercise of the discretion vested in them by law and in the interests of the public health and safety, to forbid the further erection thereof.

6. These respondents admit that the relator cannot proceed with the erection of said houses without the permit, but they deny that the regulation which provides that no house shall be erected on a lot less than fifty feet in depth is not such regulation as is contemplated by the law and within the true intent and meaning of the Act of Congress, pursuant to which the same was adopted, and they deny that the same is intended to be an attempt to hinder and prevent persons owning property in the District of Columbia from making improvements thereon and using and enjoying their property with the freedom and to the extent guaranteed them by the Constitution of the United States and the law of the land. They deny that

28 the provision of said regulations requiring the subdivision of land before the erection of improvements thereon is not within the scope of said Act of Congress and within the lawful authority of the respondents, the Commissioners of the District of Columbia, to enforce as a building regulation.

7. The respondents, the Commissioners of the District of Columbia, further answering the relator's petition, say that the regulations hereinbefore referred to, are proper and necessary requirements and reasonable with reference to the matter to which they relate; that is lots less than 50 feet in depth are to be permitted and houses are to be permitted to be erected thereon, it will be possible for the owners thereof to so arrange them that they form very irregular combinations, facing in different directions, thus requiring an undue extension of the water and sewer service to reach them; and

further, if lots are permitted to be less than 50 feet in depth or some definite depth fixed by the authorities, the resulting arrangement thereof will necessarily be more or less irregular, resulting in combinations tending to destroy and prevent proper ventilation in the rear thereof, thereby producing unsanitary and unhealthy conditions; that in order to provide air spaces which shall remain free and unobstructed as much as possible, for the circulation of air in the centers of squares, it was essential, in the judgment of the respondents, the Commissioners of the District of Columbia, to promulgate a regulation tending to produce uniformity in the subdivision of lots and in the erection of improvements therein; that if lots can be made of a depth less than 50 feet, without restrictions as to such depth,

the ordinary result will be that owners will cut the rear of
29 such lots from the front portion thereof, usually resulting in different ownership for the front and rear portions, in consequence of which the rear portion will not be kept in as good condition as if under the control of the owner of the front portion, who is thereby subjected to annoyance from a nuisance which might not exist if the rear lot were owned by him instead of by another residing in a different locality; that where such rear lots exist they involve such an extension of the sewer and water system that the cost to the public to serve the block is practically twice as great as it would be to serve the front lots alone; that while it may be that lots of 50 feet will not permit more readily an irregular arrangement than lots of 51 feet or 49 feet, yet a public necessity existed for the restriction thereof to some fixed depths in the interest of public health and safety and the same questions would arise as to the rights of the owner of property with respect to any regulation prescribing any limitation whatever upon the depth. The respondents, the Commissioners of the District of Columbia, for the information of the court, submit herewith as part hereof a sketch showing the difficulty which may easily result in the ventilation of houses upon a block of ground if the lots were permitted to be less than 50 feet in depth and when they might be of any length to suit the owner, the situation shown thereon being substantially a situation which these said respondents have been called upon to consider in the exercise of their official duties. These respondents further say that they have carefully con-

30 sidered the matters involved in said regulations and that they reached the conclusion that lots should not be allowed to be subdivided with a less depth than 50 feet and that the owner of property, in the city limits, should not be permitted, for his own benefit, particularly after the promulgation of the Regulations, to cut up his property in such manner as to compel the public in many instances, to double its expense for sewer and water service so as to make his property a nuisance to his neighbors or to create a situation which may thereafter imperil the public safety and health. These respondents deny that said Regulations are ultra vires and

void, and that the provision requiring the subdivision of a lot to be made in all cases before a building can be erected, is not within the lawful power of the respondents, the Commissioners of the District of Columbia.

8. These respondents further show to the court that the regulations concerning the platting and subdivision of land, now assailed, were promulgated on the 15th day of May, 1899, and that the relator acquired the land in his said petition mentioned thereafter, to wit, on the 4th day of October, 1900, and at the time of the acquisition thereof knew, or is chargeable with notice of the existence of said regulations and that for said reason in addition to the reasons hereinbefore recited, the application should be denied.

And having fully answered, these respondents pray that the rule to show cause why a writ of mandamus should not issue herein be discharged and that the petition of the relator herein be dismissed.

HENRY B. F. MACFARLAND,
LANSING H. BEACH,
Commissioners of the District of Columbia.

JNO. B. BRADY,
Inspector of Buildings.

31

DISTRICT OF COLUMBIA, ss:

Henry B. F. Macfarland, John W. Ross and Lansing H. Beach, Commissioners of the District of Columbia, and John B. Brady, Inspector of Buildings of the District of Columbia, upon oath say that they have read the foregoing answer by them subscribed and know the contents thereof; that the facts therein stated upon personal knowledge are true, and those stated upon information and belief they believe to be true.

HENRY B. F. MACFARLAND,
LANSING H. BEACH.

JNO. B. BRADY.

Subscribed and sworn to before me this 27th day of March, 1901.

WILLIAM TINDALL,
Notary Public.

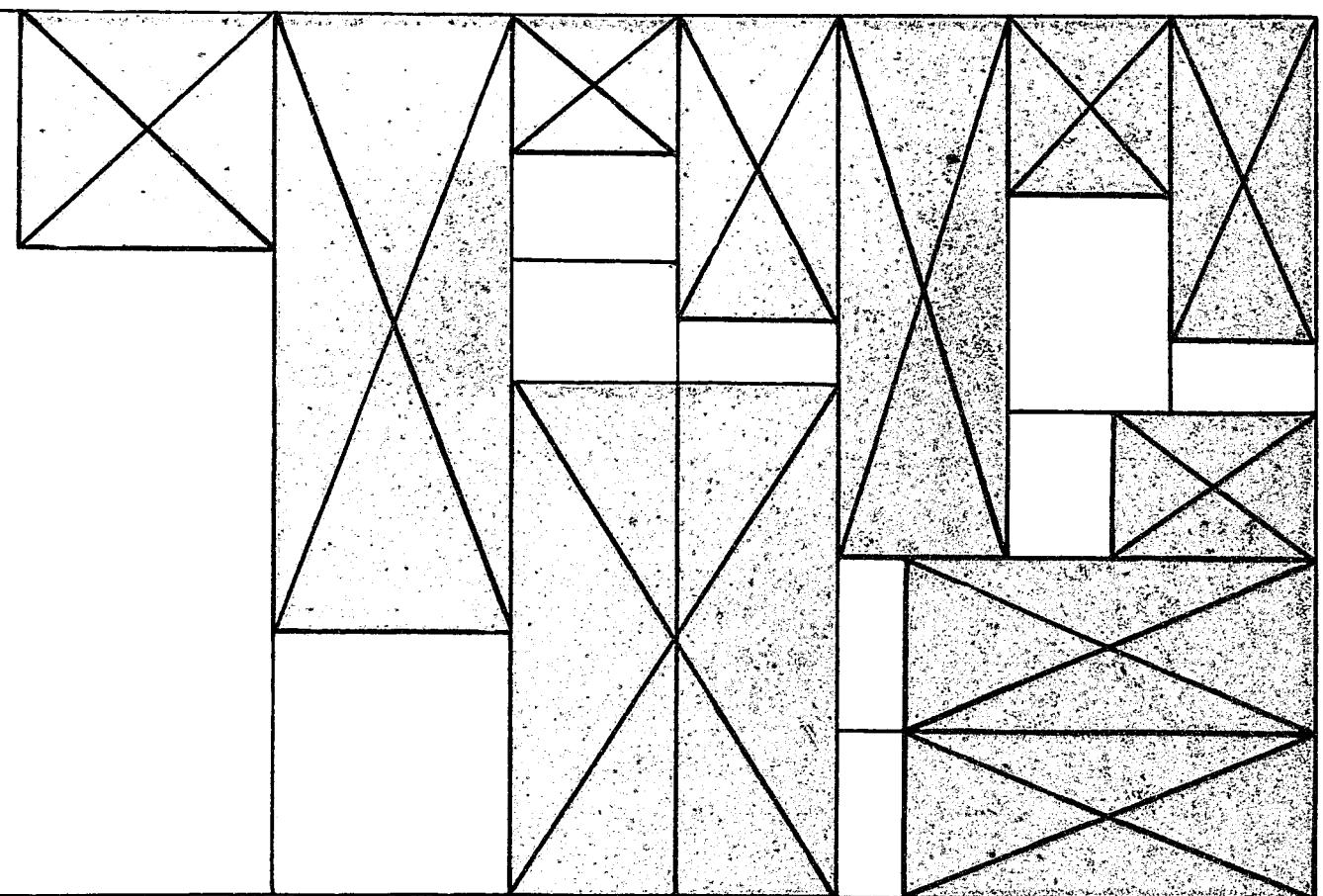
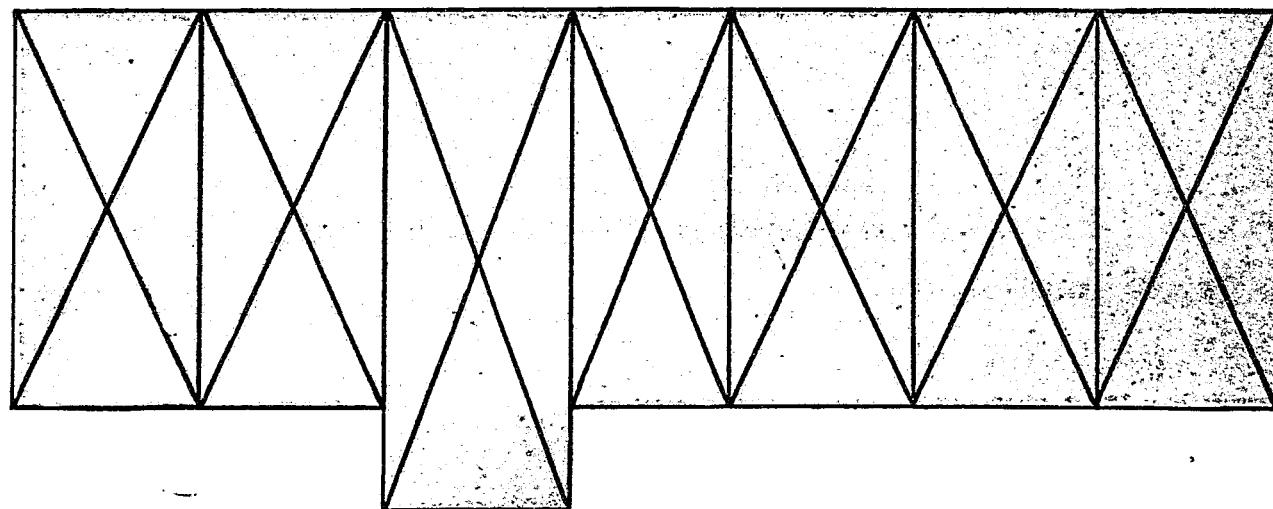
[SEAL.]

Signature and oath of Hon. John W. Ross is hereby waived.

B. F. LEIGHTON,
Attorney for Relator.

A. B. DUVALL,
C. A. BRANDENBURG,
Attorneys for Respondents.

Filed, March 28, 1901.



33

Motion for Writ of Mandamus.

Filed April 1, 1901.

In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *ex relatione*,
 FREDERICK J. MILLER, Petitioner,
 vs.
 HENRY B. F. MACFARLAND, *et al.*,
 Defendants. } No. 44566, At Law.

Now comes the relator in the above entitled cause, by B. F. Leighton, his attorney, and moves the court that a peremptory writ of mandamus issue in said cause, as prayed in his petition, notwithstanding the return of respondents thereto, because he says said return is insufficient, uncertain and evasive, and for other reasons appearing on the face of said return.

B. F. LEIGHTON,
Attorney for Relator.

Please take notice that I will call the above motion to the attention of the court (Circuit Court No. 2, Justice Clabaugh, presiding), on Friday, April 5th, 1901, at ten o'clock A. M., or as soon thereafter as counsel may be heard.

B. F. LEIGHTON,
Attorney for Relator.

To A. B. DUVALL, Esq.,
 CLARENCE BRANDENBURG, Esq.,
Attorneys for the District of Columbia.

34 *Order Directing Peremptory Writ of Mandamus to Issue
 to Building Inspector.*

In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *ex relatione*,
 FREDERICK J. MILLER,
 vs.
 HENRY B. F. MACFARLAND, *et al.* } At Law, No. 44566.

Upon consideration of the motion of the relator in the above entitled cause, for a peremptory writ of mandamus, directing the respondent, the said John B. Brady to grant a building permit unto said relator, as prayed in his said petition, notwithstanding the return of respondents to said petition, it is this 26th day of April, A. D. 1901, adjudged and ordered that relator's motion be granted;

and that the peremptory writ of mandamus issue to the respondent the said John B. Brady, requiring him to issue the permit unto relator as prayed in this petition.

By the court—

HARRY M. CLABAUGH,
Justice.

From which judgment, the respondents, in open court, by their attorneys Messrs. A. B. Duvall and Clarence A. Brandenburg, appealed to the Court of Appeals.

35 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 26, inclusive, to be a true and correct transcript of the record, as prescribed by Rule 5 of the Court of Appeals of the District of Columbia, in cause No. 44566, At Law, where in United States of America, ex relatione, Frederick J. Miller is petitioner, and Henry B. F. Macfarland et al. are respondents, as the same remains upon the files and of record, in said court.

Seal Supreme Court of the District of Columbia. In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 23d day of May, A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1100. Henry B. F. Macfarland *et al.*, appellants, *vs.* United States of America *ex relatione*, Frederick J. Miller. Court of Appeals, District of Columbia. Filed May 23, 1901. Robert Willett, Clerk.

